IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 330

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. RECONSTRUCTION FINANCE CORPORATION, ETC., AND 210 OTHER RELATORS,

Plaintiffs-Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, NELS H. OLSON, F. P. SIEBEL, SR., MRS. L. ROBERT MELLIN, MRS. W. F. HEINEMAN, WILSON FRANKLAND, SAMUEL LEVIN, JOSEPH W. CREMIN, WALTER TRUC, AND B. L. MAJEWSKI, AS MEMBERS, AND JAMES B. McCAHEY, AS MEMBER AND PRESIDENT,

Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

JOHN D. GOODLOE,
General Counsel of Reconstruction Finance Corporation.

LEE WALKER,
Attorney for Reconstruction Finance Corporation.

FLOYD E. THOMPSON,
ALBERT E. JENNER, JR.,
11 South La Salle Street,
Chicago,
Attorneys for Irving K. Hutchinson, et al.

CHESTER W. KULP,
100 West Monroe Street,
Chicago,
Attorney for City Bank and Trust Co., et al.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

INDEX TO PETITION.

PAGE

Petition for Writ of Certiorari 1

Summary Statement of Matter Involved 2

Statement of Jurisdictional Grounds 5

Statement of When and How the Jurisdictional Questions Were Raised and What Disposition Was Made of Them 6

The Questions Presented 9

Reasons for Allowance of the Writ 12

INDEX TO BRIEF.

Foreword 19

Statement of the Case 20

Argument 30

A decree is property and a denial of the only remedy for the enforcement of the decree deprives the holder of his property without due process of law. 31

When the Supreme Court of Illinois relieved the Board of Education of its obligation fixed by petitioners' decrees, it took the property of petitioners and gave it to others and thereby deprived petitioners of their property without due process of law 32

When the Supreme Court of Illinois went behind the decrees of these petitioners, which had conclusively established the liability of the Board of Education to account to them, and in effect excused the Board from its liability to restore to petitioners the property of petitioners which it had taken into its control and disbursed to others, the Supreme Court of Illinois deprived petitioners of their property without due process of law 33

When the right to review the decrees of these petitioners no longer existed, it was a usurpation of judicial authority to go behind the decrees and retry the issues settled by the decrees 36

The Supreme Court of Illinois decided a case which was not presented by the records or by the briefs of the parties and refused to decide the questions necessary to a determination of the rights of these petitioners 39

The Supreme Court of Illinois refused to decide whether petitioners' decrees were valid and whether the indebtedness decreed was absolute and so denied to these petitioners a determination of a question essential to the establishment of rights claimed by them under the Constitution of the United States 40

The Supreme Court of Illinois has arbitrarily refused to these petitioners the advantage of and redress afforded by the principles of law and presumptions and the remedies which it has heretofore afforded to all litigants in like circumstances and having claims substantially identical with those of these petitioners, and so has denied them the equal protection of the law..... 42

The sustaining of the defense of the Board of Education of its present inability to levy taxes to pay petitioners' decrees as an additional ground of its decision, after the Supreme Court of Illinois had held that the decrees were not corporate obligations of the Board of Education and could not be enforced against it, without regard to the financial condition of the Board, was not an independent ground of decision of sufficient breadth to sustain the judgment of that Court without a decision of the federal constitutional questions..... 46

INDEX TO APPENDIX.

Opinion, Leviton v. Board, first appeal..... 1-11

Opinion, Leviton v. Board, second appeal.....12-21

Opinion, Norfolk & Western Ry. Co. v. Board.....22-28

Applicable Sections, Illinois School Act.....28-32

TABLE OF CASES.

Anderson v. Anderson, 380 Ill. 435, 438, 44 N. E. (2nd) 54 42
Anderson v. Carkins, 135 U. S. 483, 486..... 50
Barbier v. Connolly, 113 U. S. 27, 31..... 42
Berman v. Board, 360 Ill. 535, 196 N. E. 464.....10, 25, 28
Board v. Norfolk & W. Ry. Co., 88 Fed. (2nd) 462..... 25
Board v. Upham, 357 Ill. 263, 266, 267, 191 N. E. 876, 878 23
Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673, 678, 680, 682 .....13, 15, 30, 41, 48
Broad River Power Co. v. South Carolina, 281 U. S. 537, 540..... 49
Brownsville v. Loague, 129 U. S. 493.....8, 10, 37
Buckmaster v. Jackson, 4 Ill. 104, 107, 110, 111....14, 38, 43
Cairo v. Campbell, 116 Ill. 305, 308, 5 N. E. 114, 115...31, 41
Carney v. Marseilles, 136 Ill. 401, 407, 26 N. E. 491, 493 .....42, 43
Casieri's Case, 286 Mass. 50, 190 N. E. 118, 120.....12, 31
C. B. & Q. R. Co. v. Chicago, 166 U. S. 226, 234, 239, 240, 241.....13, 14, 30, 32, 34
Chapman v. Goodnow's Admr., 123 U. S. 540, 548..16, 41, 51
Chicago City Bk. and Tr. Co. v. Board, 386 Ill. 508, 54 N. E. (2nd) 498..... 21
Collins v. Welsh, 75 Fed. (2nd) 894, 897 (C. C. A. 9) 12, 31
Com'rs. of Sinking Fund v. Philadelphia, 324 Pa. 129, 188 Atl. 314, 316-318.....12, 17, 50, 51
Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 559..15, 46
Cook v. Wood, 24 Ill. 295, 298..... 42
Coombes v. Getz, 285 U. S. 434, 441.....48, 49
Cromwell v. County of Sac, 94 U. S. 351, 352..... 38
C. St. P. M. & O. Ry. Co. v. Holmberg, 282 U. S. 162, 167 .....13, 33
Davidson v. New Orleans, 96 U. S. 97, 102..... 14
Davis v. Wechsler, 263 U. S. 22, 24-25..... 49

Dist. of Columbia v. Eslin, 183 U. S. 62, 65.....12, 31, 41
Drainage Com'rs. v. Rector Dr. Dist., 266 Ill. 536, 540, 107 N. E. 895, 897.....32, 41, 43, 50
Drainage Dist. v. Highway Com'rs., 238 Ill. 521, 524, 87 N. E. 394, 395..... 36
Durkin v. Hey, 376 Ill. 292, 300, 33 N. E. (2nd) 463, 466..... 14
Elmhurst Bank v. Bellwood, 372 Ill. 204, 205-207, 23 N. E. (2nd) 41..... 43
Enterprise Irrigation Dist. v. Canal Co., 243 U. S. 157, 164..... 49
Garfield v. United States, 211 U. S. 249, 262..... 14
Gelpcke v. Dubuque, 68 U. S. 175, 206.....16, 49
Gilman v. Tucker, 128 N. Y. 190, 28 N. E. 1040, 1043... 31
Greene v. L. & R. Co., 244 U. S. 499, 508.....40, 49
Hansberry v. Lee, 311 U. S. 32, 40..... 14
Harmon v. Auditor, 123 Ill. 122, 133, 135, 13 N. E. 161, 164, 165..... 42
Harshman v. Knox County, 122 U. S. 306, 318.....35, 38
Healy v. Deering, 231 Ill. 423, 431, 83 N. E. 226, 228.... 42
Hodges v. Snyder, 261 U. S. 600, 603.....13, 31
Home Tel. & Tel. Co. v. Los Angeles, 227 U. S. 278, 287 34
Indiana v. Brand, 303 U. S. 95, 98, 100.....16, 48
Iverson v. Loberg, 26 Ill. 180, 182..... 42
Knaus v. Chicago T. and T. Co., 365 Ill. 588, 591, 592, 7 N. E. (2nd) 298, 300 .....14, 38, 42
Lawrence v. State Tax Com., 286 U. S. 276, 282.16, 17, 41, 52
Leviton v. Board, 374 Ill. 594, 30 N. E. (2nd) 497..... .....4, 6, 7, 8, 14, 21, 27, 36, 39, 46, 47
Leviton v. Board, 385 Ill. 599, 53 N. E. (2nd) 596..14, 21, 28
Lilly v. Shaw, 59 Ill. 72, 77..... 42
Louisiana v. Mayor of New Orleans, 109 U. S. 285, 291. 12
Louisiana v. Pilsbury, 105 U. S. 278, 301.....13, 31, 41, 51
Louisiana v. St. Martin's Parish, 111 U. S. 716, 721... .....12, 13, 14, 31, 36, 50, 51

Marabia v. Thompson Hospital, 309 Ill. 147, 157, 140 N. E. 836 42
McCullough v. Virginia, 172 U. S. 102, 123.....32, 36
Miller v. Rowan, 251 Ill. 344, 348, 96 N. E. 285..... 42
Mo. Pac. Ry. Co. v. Nebraska, 164 U. S. 403, 417..13, 14, 33
Moore v. Town of Browning, 373 Ill. 583, 585, 586, 588, 27 N. E. (2nd) 533, 535, 536.....15, 31, 44, 50
Morgan v. Hays, 1 Ill. 126, 127..... 43
Norfolk & W. Ry. Co. v. Board, 14 Fed. Supp. 475..... 26
Nugent v. Toman, 372 Ill. 170, 175, 23 N. E. (2nd) 43, 45 36
N. Y. C. R. Co. v. N. Y. & Pa. Co., 271 U. S. 124, 126.... 49
Ochoa v. Hernandez, 230 U. S. 139, 161.....13, 33
O'Connor v. Board, 247 Ill. 54, 57-59, 93 N. E. 124, 125. 42
Oregon R. & N. Co. v. Fairchild, 224 U. S. 510, 524, 528. 30
Panhandle Co. v. State Highway Com., 294 U. S. 613, 618 .....13, 33
Penn. Co. v. Scott, 346 Pa. 13, 29 Atl. (2nd) 328, 329.12, 31
Pennoyer v. Neff, 95 U. S. 714, 733..... 14
Pennsylvania v. W. & B. Bridge Co., 59 U. S. 421, 431.. ..... 13, 31, 32
People v. Bradley, 367 Ill. 301, 305, 11 N. E. (2nd) 415, 418 .....15, 32, 38, 42, 43
People v. Cairo, 50 Ill. 154, 165, 168.....32, 43, 50, 51
People, ex rel. R. F. C. v. Board, 386 Ill. 522, 54 N. E. (2nd) 508 28
People v. Lewe, 380 Ill. 531, 535, 44 N. E. (2nd) 551.... 42
People v. L. & N. R. Co., 350 Ill. 274, 277, 278, 183 N. E. 233, 235 .....15, 32, 38, 41, 42, 43
People v. Webb, 256 Ill. 364, 379, 100 N. E. 224, 229.... 51
Pierre v. Louisiana, 306 U. S. 354, 358.....15, 42, 46
Raymond v. Traction Co., 207 U. S. 20, 35..... 34
Rogers v. Alabama, 192 U. S. 226, 230..... .....16, 17, 30, 40, 48, 49, 52
Santa Fe County v. Coler, 215 U. S. 296, 302..... 31
Scott v. McNeal, 154 U. S. 34, 45.....40, 49

Scott v. Toledo, 36 Fed. 385, 395 (C. C. N. D., Ohio)..14, 35
Sheahan v. Madigan, 275 Ill. 372, 377, 114 N. E. 135.... 42
State v. County, 112 Fla. 687, 151 So. 10, 23..... 51
State Tax Comm. v. Van Cott, 306 U. S. 511, 514..... 50
Swain v. Hoberg, 380 Ill. 442, 44 N. E. (2nd) 38..... 7
Swiggart v. Harber, 5 Ill. 364, 371..... 42
Terre Haute, etc., R. Co. v. Indiana, 194 U. S. 579, 589.16, 50
Thompson v. Con. Gas Util. Corp., 300 U. S. 55, 78-80.13, 33
Tosetti v. Koehler, 200 Ill. 369, 372, 65 N. E. 636..... 42
Town of Lyons v. Cooledge, 89 Ill. 529, 534.....15, 31, 43
Truax v. Corrigan, 257 U. S. 312, 324, 333-336.....
.....15, 40, 42, 46, 49
United States v. New Orleans, 98 U. S. 381, 395, 397...
.....31, 41, 50
Voorhees v. Bank of United States, 35 U. S. 449, 473.14, 38
Walter Cabinet Co. v. Russell, 250 Ill. 416, 421, 95 N. E. 462, 464 14
Ward v. Field Museum, 241 Ill. 496, 509, 89 N. E. 731.. 42
Ward v. Love County, 253 U. S. 17, 22, 24.....
.....13, 14, 16, 17, 34, 41, 50
Wolff v. New Orleans, 103 U. S. 358, 364, 368.....13, 41
Yick Wo v. Hopkins, 118 U. S. 356, 369, 374.....15, 46

TEXT CITED.

Freeman on Judgments, 5th Ed. Vol. 1, Sec. 373, p. 780 37

CONSTITUTION AND STATUTES CITED.

Section 1, Amendment XIV, U. S. Constitution.....
.....5, 6, 7, 8, 12, 14, 15, 17, 30, 32, 33, 40, 42
Section 237(b) of Judicial Code, 28 U. S. C., Sec. 344(b) 5
Laws of 1917, pp. 724-732; Smith-Hurd Stat. 1929, Chap. 122, Pars. 151-162 [Secs. 128-139, School Act].
.....22, 34
Act of July 12, 1937; Ill. Stat. 1937, Chap. 122, Pars. 327.62-327.68 .....26, 46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. .....

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. RECONSTRUCTION FINANCE CORPORATION, ETC., AND 210 OTHER RELATORS,

Plaintiffs-Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, NELS H. OLSON, F. P. SIEBEL, SR., MRS. L. ROBERT MELLIN, MRS. W. F. HEINEMAN, WILSON FRANKLAND, SAMUEL LEVIN, JOSEPH W. CREMIN, WALTER TRUC, AND B. L. MAJEWSKI, AS MEMBERS, AND JAMES B. McCAHEY, AS MEMBER AND PRESIDENT,

Defendants-Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

The People of the State of Illinois, on the relation of Reconstruction Finance Corporation, a corporation of the United States of America created by Act of Congress, and 210 other judgment creditors of the Board of Education of the City of Chicago, Illinois, a body politic and corporate, relators in a certain mandamus proceeding commenced in the Circuit Court of Cook County, Illinois, re-

spectfully pray that a writ of certiorari issue to the Supreme Court of Illinois directing that Court to certify to this Court the record in the case of *The People of the State of Illinois, ex rel. Reconstruction Finance Corporation, etc., et al.* v. *Board of Education of the City of Chicago, et al.*, No. 27497 in that Court, in order that the decision and judgment of said Court rendered May 11, 1944, may be reviewed by this Court, and the judgment reversed.

Summary Statement of Matter Involved.

April 28, 1939, Reconstruction Finance Corporation obtained a money decree in the Circuit Court of Cook County, Illinois, against the Board of Education of the City of Chicago, Illinois, for $128,913.50, in a suit for accounting for moneys received by said Board to the use of the corporation. (R. 10, 23.) At various times in 1938 and 1939, the other 210 petitioners recovered money decrees in similar suits for accounting. (R. 11, 15, 17, 26, 31.) The plaintiffs in these accounting suits were some of the hundreds of owners and holders of outstanding unpaid 1929 tax anticipation warrants issued and sold by said Board of Education, pursuant to Section 132 of the Illinois School Act, which limited the payment of the warrants solely from the anticipated taxes when collected, and which required that the taxes against which said warrants were drawn be set apart and held for the payment of said warrants. (App. p. 29.) Substantial sums were received into the treasury of said Board of Education from time to time as the proceeds of collections of the 1929 taxes against which said warrants were issued, but insufficient proceeds were received to pay all outstanding warrants in full. The Board of Education exhausted the funds by paying certain warrants in full of principal and interest to the exclusion of petitioners and other warrant holders. It was held in the accounting suits

that the proceeds of collection being insufficient to pay all warrants in full, all warrant holders were entitled to a pro rata distribution of the proceeds of collections received by said Board of Education and the decrees entered are for the pro rata amounts of the proceeds of collections received into the treasury of the Board of Education, with statutory interest upon said amounts for the periods distribution was withheld. (R. 23-26, 31-36.)

Prior to the entry of any decree in the State courts, a decree substantially like those held by petitioners was entered in an accounting suit commenced against said Board of Education by another unpaid warrant holder in the United States District Court for the Northern District of Illinois (See opinion of District Court, App. p. 22), and this decree was affirmed by the Court of Appeals for the Seventh Circuit. Reference was made to this case by the Supreme Court of Illinois in its first opinion in this group. (App. pp. 2, 3.)

November 13, 1942, no steps having been taken by the Board of Education to provide for the payment of these money decrees, despite timely and repeated demands, petitioners commenced an action for writ of mandamus in the Circuit Court of Cook County, Illinois. (R. 1.) The petition alleged the entry of the money decrees by Illinois courts of general jurisdiction in adversary proceedings in which the Board of Education appeared and made defense, the regularity of the proceedings in which such decrees were entered, that said decrees were final, unimpeached and unpaid and were valid subsisting obligations of said Board of Education, and that no provision had been made for their payment, nor had any attempt been made to bring about their payment. (R. 8-22, 37-39.) The petition prayed that a writ of mandamus issue commanding the Board and its officers to do every act and thing imposed upon them by law to bring about the payment of the several decrees,

to include said decrees in the Board's annual school budget and appropriation ordinance as provided by law and levy the necessary taxes in connection therewith, or issue its bonds as provided by statute and employ the proceeds of sale thereof to the payment of said decrees, or that such other and further or different relief be granted as the nature and exigencies of the cause should require. (R. 21, 37.)

The Board of Education and its officers answered, admitting the facts alleged but denying that the decrees were valid. It averred that the claims maintained against the Board of Education in the proceedings in which the decrees were entered were without merit and were not liabilities of said Board, that therefore the decrees should not have been entered, that the several courts exceeded their jurisdiction in so doing, and that the decrees had been impeached by the decision of the Supreme Court of Illinois in *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497. (R. 40-52.) There was the further averment of the conclusion that all proceeds of collection of school tax levies for the fiscal year 1943 and all other revenue of the Board of Education for such year were necessary to meet the ordinary and necessary expenses of operating and maintaining the public schools of Chicago and that there were no excess revenues which could be applied in payment of any of the decrees. (R. 52-56.)

Relators moved to strike the answer and for judgment. (R. 60-62.) The motion was denied, the defenses were sustained, and judgment was entered dismissing the petition. (R. 62-63.) The Supreme Court of Illinois affirmed. (R. 66-78.)*

---

* All record references are to the record in this case, *People, etc.* v. *Board*, unless otherwise indicated. It will be necessary to make some references to the record in the companion case, *Leviton* v. *Board* (entitled in this Court, *F. J. Lewis, Petitioner*, v. *Board of Education and Frank C. Leviton*), which is the ruling case of the group, and to the record in the other related case, *Hutchinson* v. *Board*, and when such references are made we shall so indicate.

Statement of Jurisdictional Grounds.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code. (28 U. S. C., Sec. 344(b).) This cause, originated in the Circuit Court of Cook County, Illinois, and was reviewed on appeal by the Supreme Court of Illinois. The Circuit Court filed no opinion. The opinion of the Supreme Court was filed and judgment was entered March 21, 1944 (R. 66, 77,) but a petition for rehearing was filed (R. 78) and it was denied and the judgment became final May 11, 1944. (R. 95.) The opinion of the Supreme Court appears at pages 66 to 76 of the record and is reported at 386 Ill. 522, 54 N. E. (2d) 508.

It is claimed by petitioners that their decrees are property and that by denying to them their only available remedy of enforcement, their property in their decrees has been taken without due process of law and they have been denied the equal protection of the law in violation of Section 1 of Amendment XIV of the Constitution of the United States, by the decision and judgment of the Supreme Court of Illinois.

The decrees entered in the accounting suits in favor of these petitioners and against the Board of Education were entered by courts of competent jurisdiction, are final and unimpeachable and are immune from collateral attack in this mandamus proceeding. The Supreme Court of Illinois usurped judicial power and invaded the property rights of these petitioners in their decrees when it denied the conclusive effect of the decrees, went behind the decrees and the issues settled thereby and held that the claims upon which the decrees were entered were not valid claims against the Board. As a consequence the judgment of the Supreme Court deprived the petitioners of their property without due process of law and denied them the equal pro-

tection of the law, in violation of the Fourteenth Amendment.

The Supreme Court of Illinois failed or refused to pass upon the contentions of petitioners that their rights under the Constitution of the United States had been invaded, affirmed the judgment below upon non-federal grounds which are untenable and unsubstantial, and which are not of a character as made a decision of the federal questions unnecessary. This denied petitioners their day in court on the federal questions presented.

The result of the decision and judgment of the Supreme Court of Illinois is to deny to these petitioners their rights under the Constitution of the United States claimed and asserted at every available opportunity. The value of their decrees has been destroyed and they have been deprived of their property without due process of law and denied the equal protection of the law in violation of the Fourteenth Amendment.

Statement of When and How the Jurisdictional Questions Were Raised and What Disposition Was Made of Them.

The petitioners' motion in the Circuit Court to strike the answer of the Board of Education and for judgment affirmatively alleged that to sustain the defenses averred in the answer would be to deprive petitioners of their property without due process of law in violation of Section 1 of Amendment XIV of the Constitution of the United States. (R. 62.) The Circuit Court considered that the decision of the Illinois Supreme Court in *Leriton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497, was binding upon it and upon the parties, and overruled the motion of petitioners, sustained the defenses averred in the answer,

denied to petitioners the relief prayed in the petition, and dismissed the petition. (R. 63.)

On their appeal to the Supreme Court of Illinois, petitioners in their printed briefs assigned as error* and fully argued that the judgment of the Circuit Court deprived them of their property without due process of law contrary to Amendment XIV of the Constitution of the United States because:

(a) The judgment of the Circuit Court amounted to a vacation of petitioners' decrees, which relief the Court was without jurisdiction to grant after the decrees became final. (Brief, pp. 12, 21, 46; Reply Brief, pp. 19-21.)

(b) In holding in effect that petitioners' rights were adjudicated by the judgment of the Illinois Supreme Court in the case of *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497, to which none of them was a party and in which none was represented, the Circuit Court deprived petitioners of their day in court. (Brief, pp. 18, 42; Reply Brief, pp. 12-13.)

(c) The judgment of the Circuit Court deprived petitioners of all judicial means available to them of enforcing their decrees and destroyed the value of said decrees as property. (Brief, pp. 20-21, 46-48; Reply Brief, pp. 13-19.)

(d) In going behind the decrees and reconsidering the questions finally determined by said decrees, the Circuit Court usurped judicial power. (Brief, pp. 46-48; Reply Brief, pp. 19-21.)

The Supreme Court of Illinois did not pass upon these contentions of denial of rights claimed under the Consti-

* All briefs filed by the parties in the Supreme Court of Illinois have been certified to this Court. The practice of making formal assignments of error on the record on appeal does not obtain in Illinois. Instead, the grounds of appeal and questions sought to be raised on review are required to be set forth in appellants' brief, and it is sufficient if the errors relied upon for reversal clearly appear from an examination of the entire brief. *Swain* v. *Hoberg*, 380 Ill. 442, 44 N. E. (2nd) 38.

tution of the United States and the only indication in the opinion that the questions were noticed is the statement that "many other points are discussed in the able briefs of counsel, which we have carefully considered, but most of which have no application to the questions presented, and hence are not discussed in this opinion." (R. 76.)

In their petition for rehearing, these petitioners pointed out in detail their claims that rights guaranteed to them under Amendment XIV of the Constitution of the United States had been denied by the decision and judgment of the Supreme Court of Illinois, but this petition was denied without opinion. The petition directed the attention of the Court particularly to the following:

(a) Petitioners were denied their day in court and due process of law by the failure or refusal of the Court to pass upon the validity of the money decrees held by them. (R. 82, 92.)

(b) Petitioners were denied due process of law by the application to this case of the decisions in *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2nd) 497, and 385 Ill. 599, 53 N. E. (2nd) 596, which was litigation between the municipal corporation and its taxpayers, the interests of both being adverse to the interests of these petitioners, who were not parties to or represented by any party to said litigation. (R. 90-91.)

(c) Unlike the judgment creditor in *Brownsville* v. *Loague*, 129 U. S. 493, petitioners were not relying upon any remedy for enforcement of their decrees which was apart from the decrees themselves and the Supreme Court of Illinois in arbitrarily stating otherwise made and disposed of a case wholly different from the one actually before the Court and argued by the parties. (R. 83-86.)

(d) The Court misstated the rule of the many decisions relied upon by petitioners in their briefs, wherein the doctrine of the inviolability of final judgments against collateral attack was held to apply to judgments against municipal corporations of all varieties, even where the claims upon which the judgments were

entered were debts, obligations, or liabilities which the municipal corporations in question had no constitutional or statutory power to incur or were by such constitutions or statutes prohibited from incurring, and refused to enforce the rights and remedies vested in these petitioners by their decrees and deprived them of their property in their decrees without due process of law. (R. 87-88.)

(e) The Court by its decision and judgment failed and refused to afford to petitioners the same protection and advantage of the laws afforded to and enjoyed by other litigants under substantially like circumstances and having claims and rights substantially identical with those of petitioners, and so denied them the equal protection of the law. (R. 88-90.)

(f) The holding of the Court that the Board did not have the present ability to levy taxes to pay the decrees of petitioners, as an added ground of decision, is not a substantial independent ground of decision which makes it unnecessary to pass on the federal constitutional questions after the Court by its first ground of decision has destroyed the property of petitioners in their decrees by holding them unenforceable. (R. 91-93.)

The Questions Presented.

The following questions arise upon the record and are in issue:

1. Did the Supreme Court of Illinois fail or refuse to decide federal constitutional questions presented and are the non-federal grounds of decision advanced by that Court untenable or unsubstantial or not of sufficient breadth to sustain the judgment without a decision of the federal questions?

2. Are the decrees entered in favor of petitioners against the Board of Education in their accounting suits property protected by the Fourteenth Amendment of the Constitution of the United States?

3. Have the decision and judgment of the Supreme Court of Illinois, which does not hold petitioners' decrees void but holds them to be unenforceable, plainly resulted in a denial to the petitioners of the rights guaranteed to them by the Fourteenth Amendment?

4. Did the Supreme Court of Illinois, by passing the constitutional questions presented and argued by petitioners by a mere statement that the questions had no application to what the Court said was the issue in the case and failing or refusing to decide the questions, deny to these petitioners their day in court on their rights claimed under the Constitution of the United States, and so deny to them due process of law?

5. Did the Supreme Court of Illinois, by holding that petitioners in their accounting suits sued on their tax anticipation warrants and sought to require the Board of Education to pay such tax warrants in whole or in part, thereby stating a case within *Berman* v. *Board of Education*, 360 Ill. 535, 196 N. E. 464, notwithstanding their complaints and the findings in the decree that petitioners' suits for accounting were for assigned and pledged tax moneys actually received into the treasury of the Board to petitioners' use, state and decide a case not before that Court and thereby usurp judicial powers and deprive petitioners of their property without due process of law?

6. Did the Supreme Court of Illinois find that petitioners were looking to some source other than their decrees for the right to bring about their payment, thereby stating a case within *Brownsville* v. *Loague*, 129 U. S. 493, notwithstanding petitioners' reliance solely on their decrees for their rights and the Board's duties, and state a case other than the one before it, and as a consequence usurp judicial powers and deprive petitioners of their property without due process of law?

7. Did the Supreme Court of Illinois go behind the decrees in the accounting suits and reconsider the questions conclusively determined by said decrees and decide, because of what it regarded as lack of merit in the claims on which the decrees were entered, that the decrees should never have been entered, and thereby usurp judicial power and destroy the vested rights of these petitioners in their decrees without due process of law and deny to petitioners the equal protection of the law?

8. Has the Supreme Court of Illinois, by its refusal to pass upon the validity of the money decrees of these petitioners, denied them their day in court on a question vital to enforcement of their property rights and so denied them due process of law?

9. Has the Supreme Court of Illinois, by its refusal to order the writ of mandamus, thereby taking from the petitioners their only remedy to compel payment of their decrees, deprived them of their property in these decrees without due process of law and denied to them the equal protection of the law?

10. Did the Supreme Court of Illinois, by its judgment, the effect of which was to release the Board of Education of its obligation to pay the decrees, take the property of petitioners and give it to the Board of Education and thereby deprive them of their property without due process of law?

11. Did the Supreme Court of Illinois, by deciding that the Board of Education was not under duty to account to these petitioners for their property received by said Board to their use, which it paid out to others, permit said Board to take the property of these petitioners without compensation, thereby depriving them of their property without due process of law?

12. Did the Supreme Court of Illinois deny to these petitioners the advantages of and redress afforded by the

principles of law, the presumptions and the remedies which had theretofore and have since been afforded to all other litigants in like circumstances and having claims substantially identical with those of petitioners, and so deny to petitioners the equal protection of the law?

Reasons for Allowance of the Writ.

1. The exclusive remedy for enforcing a money decree against a municipality is the compelling of the levy and collection of taxes or the issuance and sale of bonds authorized by statute to pay valid decrees and judgments, and this remedy for enforcing the decree is the life of the decree. (*Dist. of Columbia* v. *Eslin*, 183 U. S. 62, 65; *Louisiana* v. *Mayor of New Orleans*, 109 U. S. 285, 291.) A judgment or decree is property as much protected by the Fourteenth Amendment as any other property. (*Collins* v. *Welsh*, 75 Fed. (2d) 894, 897 (C. C. A. 9th); *Penn. Co.* v. *Scott*, 346 Pa. 13, 29 Atl. (2d) 328, 329; *Casieri's Case*, 286 Mass. 50, 190 N. E. 118, 120.) While it is undoubtedly true that a court may in a collateral proceeding control the enforcement of a judgment, it is equally well settled that the control exercised must not be such as violates federal constitutional inhibitions. (*Com'rs. of Sinking Fund* v. *Philadelphia*, 324 Pa. 129, 188 Atl. 314, 316-318.) While it is settled that a court may inquire into the basis of a decree in collateral proceedings brought to enforce such decree to determine the nature of the causes of action and the claims conclusively adjudicated by the decree, it is equally well settled that no court has the judicial power or right to conduct a re-examination of the question of the validity or merit of the claims adjudicated by the decree, or of the propriety of the decree. (*Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721.) The refusal to award a writ of mandamus to petitioners in this case deprives them of their property in their decrees without due process of law. (*Loui-*

siana v. *Pilsbury*, 105 U. S. 278, 301; *Wolff* v. *New Orleans*, 103 U. S. 358, 364, 368; *Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 682; *Hodges* v. *Snyder*, 261 U. S. 600, 603.) The proposition is not to be denied, especially as it respects adjudication upon private rights of parties, that when these rights have passed into judgment they become absolute and are conclusively established against collateral attack and it is the duty of courts to enforce the judgment. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U. S. 421, 431; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721.

2. The Supreme Court of Illinois, by refusing to grant the petitioners their only remedy to enforce their decrees against the Board of Education and relieving the Board of its obligation to pay the decrees and its duty to account, has taken the property of petitioners and given it to the Board without due process of law. *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 80; *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403, 417; *C. St. P. M. & O. Ry. Co.* v. *Holmberg*, 282 U. S. 162, 167; *Ochoa* v. *Hernandez*, 230 U. S. 139, 161.

3. The Supreme Court of Illinois, by going behind the decrees in the accounting suits and deciding that the Board of Education was under no contractual obligation to these petitioners with respect to the proceeds of the collections of taxes against which petitioners' warrants were issued, which were actually received by said Board to the use of these petitioners, permitted said Board to take the private property of these petitioners without compensation and thereby deprived them of their property without due process of law. *Ward* v. *Love County*, 253 U. S. 17, 24; *Panhandle Co.* v. *State Highway Commission*, 294 U. S. 613, 618; *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226, 234-235.

4. The Supreme Court of Illinois, by going behind the decrees and holding that the Board of Education is under no duty to account for or restore the money, compensation,

and property of petitioners which the Board arbitrarily and without authority appropriated and paid over to others, has countenanced the taking by an agency of the State of Illinois of the property of one private person and the giving of such property to another private person arbitrarily and without due process of law in contravention of the Fourteenth Amendment. *Ward* v. *Love County*, 253 U. S. 17, 24; *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S. 226, 239, 240, 241; *Scott* v. *Toledo*, 36 Fed. 385, 395 (C. C. W. D., Ohio); *Davidson* v. *New Orleans*, 96 U. S. 97, 102; *Missouri Pacific Ry. Co.* v. *Nebraska*, 164 U. S. 403, 417.

5. The Supreme Court of Illinois, by denying to these petitioners the conclusive effect of the decrees entered in the accounting suits and going behind these decrees after they had become final and were not reviewable, has usurped judicial authority and has deprived these petitioners of their property in their decrees without due process of law. *Voorhees* v. *Bank of United States*, 35 U. S. 449, 473; *Buckmaster* v. *Jackson*, 4 Ill. 104, 107, 110, 111; *Louisiana* v. *St. Martin's Parish*, 111 U. S. 716, 721; *Knaus* v. *Chicago Title and Trust Co.*, 365 Ill. 588, 591, 7 N. E. (2d) 298, 300.

6. The effect of the holding of the Supreme Court of Illinois in this mandamus proceeding is that the judgments in *Leviton* v. *Board of Education*, 374 Ill. 594, 30 N. E. (2d) 497, and 385 Ill. 599, 53 N. E. (2d) 596, are binding on these petitioners and amounts to an adjudication that their money decrees are unenforceable, and as a consequence deprives these petitioners of their property in their decrees without a hearing and denies them due process of law. *Hansberry* v. *Lee*, 311 U. S. 32, 40; *Garfield* v. *United States*, 211 U. S. 249, 262; *Pennoyer* v. *Neff*, 95 U. S. 714; *Durkin* v. *Hey*, 376 Ill. 292, 300, 33 N. E. (2d) 463; *Walter Cabinet Co.* v. *Russell*, 250 Ill. 416, 421, 95 N. E. 462, 464.

7. The Supreme Court of Illinois refused to these petitioners the advantages of and redress afforded by the

principles of law, the presumptions and the remedies which had theretofore been afforded to all litigants in like circumstances and having claims and decrees substantially identical with those of these petitioners, and denied to them the equal protection of the law, in violation of Section 1 of Amendment XIV of the Constitution of the United States. (*Pierre* v. *Louisiana*, 306 U. S. 354, 358; *Truax* v. *Corrigan*, 257 U. S. 312, 333-336; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 559; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374.) The Court did not mention, directly or inferentially, *Moore* v. *Town of Browning*, 373 Ill. 583, 27 N. E. (2nd) 533; *People* v. *Village of Bradley*, 367 Ill. 301, 11 N. E. (2d) 415; *People* v. *L. & N. R. Co.*, 350 Ill. 274, 183 N. E. 233; *Town of Lyons* v. *Coolidge*, 89 Ill. 529, and its many other decisions cited in the briefs of these petitioners holding that the decrees in the accounting suits were final and conclusive of every question within the issues of those suits and binding not only upon the Board but upon the courts as well, that the decrees could not be collaterally impeached irrespective of the nature and character of the claims finally and conclusively adjudicated by such decrees, that they were corporate obligations of the municipal corporation against which they were entered, and that the Board of Education could not escape making provision for their payment. These cases cannot be distinguished from the case of these petitioners. This action of the Supreme Court of Illinois is more than a mere erroneous decision or a mere failure to follow precedent. (*Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 680-681.) It is plain that the result of the action of the Supreme Court of Illinois is that these petitioners are denied relief solely because their title to the fund for which the Board was ordered to account by the Circuit Court and the Superior Court of Cook County is evidenced by a contract called a tax anticipation warrant instead of by a like contract called by some other name. The fed-

eral constitutional rights and privileges of the citizen are not to be denied or impaired by anything so illusory. In considering whether citizens have been deprived of their constitutional rights this Court will be guided by realities and not by mere labels and, in so doing, will look to the fair result of the decision and action of a State court as bearing upon such constitutional rights. *Rogers* v. *Alabama*, 192 U. S. 226, 230.

8. The federal constitutional rights of petitioners, that they shall be accorded their day in court, that they shall be accorded equal protection of the laws, and that their property, rights and remedies shall not be impaired, interfered with, appropriated or taken by the State without due process of law, clearly and affirmatively asserted by petitioners at every stage of the proceedings in the State courts, have been sacrificed and denied to them by the refusal and failure of the Supreme Court of Illinois judicially to pass upon, declare and protect those rights, by the action of that Court in persisting in declaring and describing the claims and causes of action maintained by petitioners and conclusively judicially determined in their accounting suits, to be other than what such claims actually were and are, by the action of that Court in disposing of petitioners' mandamus proceeding upon a case made by the Court in its opinion and not upon the case made by the record on appeal and presented in the briefs of the parties, and by the action of that Court in disposing of the case before it upon unsubstantial, untenable, illusory, and patently erroneous non-federal grounds. *Gelpcke* v. *City of Dubuque*, 68 U. S. (1 Wall.) 175, 206; *Terre Haute, etc. R. Co.* v. *Indiana*, 194 U. S. 579, 589; *Ward* v. *Love County*, 253 U. S. 17, 22; *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282; *Chapman* v. *Goodnow's Adm'r.*, 123 U. S. 540, 548; *Rogers* v. *Alabama*, 192 U. S. 226, 230; *Indiana* v. *Brand*, 303 U. S. 95, 100.

9. The sustaining of the defense of the Board of Education of its present inability to levy taxes to pay petitioners' decrees as an additional ground of its decision after the Supreme Court of Illinois had held that the decrees were not corporate obligations of the Board of Education and could not be enforced against it was not an independent ground of decision of sufficient breadth to sustain the judgment of that Court without a decision of the federal constitutional questions. The Fourteenth Amendment insures to the citizen the privilege of having his constitutional rights and immunities judicially declared and protected when properly invoked and this Court has the province to inquire whether the decision of the State court rests on a fair and substantial nonfederal ground or one merely illusory. (*Lawrence* v. *State Tax Com.*, 286 U. S. 276, 282; *Ward* v. *Love County*, 253 U. S. 17, 22; *Rogers* v. *Alabama*, 192 U. S. 226, 230.) While the Court may in a collateral proceeding control the enforcement of a judgment, it is well settled that the control exercised must not be such as violates the Fourteenth Amendment. *Com'rs. of Sinking Fund* v. *Philadelphia*, 324 Pa. 129, 188 Atl. 314, 317.

10. It will be in the interests of the proper administration of justice to grant a writ of certiorari in this case in order to correct a plainly untenable and erroneous decision of the Supreme Court of Illinois based on a misstatement of the undisputed facts. These judgment creditors have been compelled to contend with the Supreme Court of Illinois against theories advanced by the Court rather than with other litigants in the case. The Supreme Court of Illinois has arbitrarily stated the facts to suit its own purposes and has arbitrarily refused to apply principles of law to this case and companion cases, established by its own decisions and by the decisions of the courts of every American jurisdiction. In addition to the 211 petitioners, comprised of individuals, executors, trustees, receivers, banks, and insurance companies, re-

siding or having their places of business in twenty-two states and the District of Columbia, there are hundreds of other holders of outstanding unpaid tax anticipation warrants, some of whom have decrees like those of petitioners and some of whom have not yet obtained decrees. Not merely because of the large number of persons and the large amount of money involved, but because of the general public importance of the questions presented, which arise with great frequency, we believe this case to be of sufficient importance, of such general interest, and involving such substantial federal constitutional questions as to move this Court to grant this petition in the exercise of a sound judicial discretion.

Respectfully submitted,

JOHN D. GOODLOE,
General Counsel of Reconstruction Finance Corporation.

LEE WALKER,
Attorney for Reconstruction Finance Corporation.

FLOYD E. THOMPSON,
ALBERT E. JENNER, JR.,
11 South La Salle Street,
Chicago,
Attorneys for Irving K. Hutchinson, et al.

CHESTER W. KULP,
100 West Monroe Street,
Chicago,
Attorney for City Bank and Trust Co., et al.

I have authorized the filing of the foregoing petition for writ of certiorari on behalf of Reconstruction Finance Corporation.

CHARLES FAHY,
Solicitor General of the United States.